

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of Section 255 of the)
Telecommunications Act of 1996)

WT Docket No. 96-198

Access to Telecommunications Services,)
Telecommunications Equipment, and)
Customer Premises Equipment)
By Persons With Disabilities)

DOCKET FILE COPY ORIGINAL

COMMENTS OF U S WEST, INC.

I. INTRODUCTION

As the Federal Communications Commission ("Commission") correctly noted in the above-referenced Notice of Inquiry,¹ Section 255 of the Telecommunications Act of 1996² is a self-effectuating provision, taking effect as of February 8, 1996.³ The requirements of that provision are fairly straightforward, at least from a telecommunications service provider perspective. The Commission need not enact

¹ In the Matter of Implementation of Section 255 of the Telecommunications Act of 1996; Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment By Persons with Disabilities, WT Docket No. 96-198, Notice of Inquiry, FCC 96-382, rel. Sep. 19, 1996 ("Notice").

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 75 § 255 (1996) ("1996 Act").

³ Notice ¶ 2.

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any rules at this time with respect to such providers or their service offerings,⁴ relying -- as the statute clearly contemplates⁵ -- on the complaint process to resolve any disputes in the area of telecommunications services access and accommodation. Rather, the Commission should work with the Architectural and Transportation Barriers Compliance Board ("Access Board") to assure that its promulgated guidelines allow for the kind of flexibility necessary to capture the value of rapidly-changing technology and to allow it to be utilized in the most cost effective and market beneficial manner, so as to ensure broad-based compliance with Section 255.

The Commission can explore whether additional rules or guidance in the area of telecommunications services provisioning are necessary upon the completion of the work of the Access Board. The Access Board will provide guidelines with respect to Section 255 access matters *vis-à-vis* manufacturers of telecommunications equipment and CPE within the next 18 months.⁶ The current Notice proceeding⁷

⁴ The Commission notes that the term "provider of telecommunications services" is not defined in the statute, but the term "telecommunications services" is. Id. ¶ 8. The term "telecommunications services" needs no definition beyond that found at 47 USC § 153. A provider of such services is, clearly, a "provider of telecommunications services." The provision of enhanced or information services is not covered by the definition, or by Section 255 (except, possibly, with respect to customer premises equipment ("CPE")), see id. ¶ 9).

⁵ Id. ¶ 7.

⁶ Id. ¶ 3. Section 255(e), referencing the Access Board, makes specific reference to telecommunications equipment and CPE.

⁷ Id. ¶ 4 n.3, where the Commission observes that the Access Board requested that the Commission establish a proceeding "in order to facilitate the Access Board's statutory responsibilities."

should provide the Access Board with relevant and pertinent information to guide it in its own deliberations and the promulgation of guidelines, as contemplated by Congress. In light of this ongoing activity, the simultaneous promulgation of rules or guidelines with respect to the provision of telecommunications services access, separate and apart from the work of the Access Board would not be a sound approach and would be premature. There will be ample time after the Access Board issues its guidelines to determine whether any further regulatory action is required by the Commission with respect to Section 255 compliance.⁸

II. JURISDICTIONAL ISSUES

The Commission notes that Section 255(f) provides it with exclusive jurisdiction with respect to any complaint under Section 255.⁹ From the reference to this grant of complaint authority, as embellished by other provisions of the 1996 Act pertaining both to wireline and wireless services, the Commission concludes that it has general enforcement authority with respect to Section 255, authority which would support regulatory activities ranging from dispute resolution in

⁸ As a general matter, U S WEST, Inc. ("U S WEST") believes that Section 255 is best implemented with less formal regulation rather than more. This is especially true given the non-carrier companies that are affected by the statute. Thus, we would support future policy statements over future formal rules, should any future action be deemed necessary.

⁹ Notice ¶¶ 7, 36.

specific complaint cases to the promulgation of guidelines, policy statements or formal rules pertaining to service access by those individuals with disabilities.¹⁰

U S WEST does not doubt the Commission's ability to engage in any of the above actions with respect to telecommunications services and the providers of those services within the context of access to those services by individuals with disabilities. However, we urge the Commission -- at least for the moment if not as a matter of future practice -- to limit the exercise of its jurisdiction to those circumstances clearly contemplated, indeed virtually recommended, by Congress -- complaint proceedings.¹¹ As a general matter, by relying on the complaint process as the primary enforcement vehicle, companies (whether manufacturers, CPE vendors, or telecommunications service providers) are accorded the greatest flexibility and opportunity for innovation with respect to how they achieve compliance with Section 255 in a market significantly defined and impacted by changing technology. Additionally, this model best replicates that model utilized in an open market economy.

As the Commission acknowledges, technology is rapidly changing.¹² Thus, the placement of access/accommodation features will almost always require a

¹⁰ Id. ¶ 7. See also id. ¶¶ 28-34.

¹¹ Id. ¶ 7. As the Commission observes, Section 255 as enacted omitted the Senate Bill language requiring the Commission to develop implementing regulations. Id. ¶ 29.

¹² "We . . . note that the rapid pace of market and technological developments means that what is 'readily achievable' is an every-changing dynamic: an accessibility solution which is difficult or impossible to implement at one point may become an

balancing of the propriety of putting such features in the network as opposed to in CPE. This will generally be a case-by-case analysis, grounded in the technology and the offerings available at the time any particular dispute arises. This suggests that the complaint process is the one best-suited to Section 255 enforcement matters,¹³ because it will allow the “readily achievable” standard to be applied and adjudicated “in a way that will take advantage of market and technological developments, without constraining competitive innovation.”¹⁴ It also provides the best procedural vehicle for the establishment of a “disability.”¹⁵

established cost-effective technology a short time later.” Id. ¶ 16. And see Separate Statement of Chairman Reed E. Hundt (“Hundt Statement”) at 1.

¹³ The Commission need not establish separate procedural rules for Section 255 (see Notice ¶ 37, inquiring on this issue) but should simply adopt its existing Section 208 informal and formal complaint rules.

¹⁴ Id. ¶ 16. While U S WEST does not believe that, as an abstract matter, an entity subject to the requirements of Section 255 should be subjected to an “accessibility obligation [that is] continually adjusted to recognize the most recently developed technology that is ‘readily achievable’” (id., emphasis added), we believe it does make sense to assess a defendant’s compliance with the “readily achievable” standard against a time specific, i.e., the time when the complainant’s complaint arose.

¹⁵ As the Commission notes, the definition of the term “disability” for purposes of Section 255 application requires a record of an impairment. See id. ¶ 13. The Commission seeks comment on how this impairment requirement might best be applied in a Section 255 context. Id. ¶ 14. U S WEST believes that such a record is particularly well-suited to demonstration in a specific complaint proceeding.

III. NETWORK VERSUS CPE ACCESS/ACCOMMODATION ISSUES

The Commission contemplates that there will be some tension with respect to access and accommodation issues as among manufacturers, CPE and telecommunications services providers.¹⁶ For example, the Commission notes that “consumers (including individuals with disabilities) often have the ability to choose between various CPE options, while having comparatively constrained options regarding network or infrastructure hardware.”¹⁷ In its use of the term “constrained,” one might read into the Commission’s observation a negative connotation, i.e., that networks should be more robust in their ability to deal with idiosyncratic consumer needs.

While the proliferation of new entrants into the marketplace, and the introduction of increasingly intelligent networks and peripheral devices will certainly allow the deployment of new telecommunications products and services, some of which will clearly be “niche” offerings, as a general matter, networks are not well suited to the insinuation of features and options that serve idiosyncratic end-user demand.

¹⁶ Id. ¶ 29, where the Commission inquires whether it, working in conjunction with the Access Board, should “issue guidelines concerning the allocation of responsibility in instances when equipment and services overlap or converge?” See also id. ¶¶ 4, 29, 39-40 and Hundt Statement at 2.

¹⁷ Id. ¶ 10. See also ¶ 39, where the Commission addresses a number of issues associated with potential “joint responsibility” either for accessibility or non-accessibility.

Attached, and incorporated herein by this reference, are U S WEST's Comments in a different Commission proceeding dealing with Hearing Aid Compatibility and volume control features. As that filing makes clear, such a feature is peculiarly well-suited to being handled through CPE treatment, where those individuals wanting such a feature can purchase it. Installing such a feature in the network would not only entail a hefty price tag, one needing to be borne by all users of the network infrastructure, but could easily involve intransigent incompatibility problems -- problems that will not be eliminated by Section 255.

Even if manufacturers of telecommunications equipment have accessibility requirements, the fact that there are more than one vendor of such equipment, and that the software/protocols associated with such equipment are often proprietary, means that without protracted standards work, the network infrastructure will not be the ideal place to incorporate features that cater to idiosyncratic customer needs in the area of access and accommodation. And, since CPE continues to get smarter and smarter, it should not be surprising that manufacturers and network providers will often argue that, as a matter of efficient design and public policy, features that are wanted only by a segment of the population should be embedded in the access component of the total telecommunications service most calculated to meet that type of specific customer demand -- CPE.

IV. CONCLUSION

The Commission should not, particularly at this time, promulgate rules pertaining to access for individuals with disabilities with respect to providers of telecommunications services. At a minimum, the Commission should await the output of the Access Board. At that time, the Commission will be in a better position to determine whether any further action at all is appropriate with respect to Section 255, short of responding in a timely fashion to individual complaints. If any additional guidance is deemed necessary, the Commission can determine -- at that time -- what the form of that guidance should take.

Respectfully submitted,

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Of Counsel,
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October 28, 1996

ATTACHMENT

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Access to Telecommunications) CC Docket No. 87-124
Equipment and Services By Persons)
With Disabilities)

COMMENTS OF U S WEST, INC.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

I. INTRODUCTION

Undoubtedly due to the predicate work done by the Hearing Aid Compatibility Negotiated Rulemaking Committee ("Committee"), the rules currently being proposed by the Federal Communications Commission ("Commission") with respect to the implementation of the Hearing Aid Compatibility Act of 1988¹ are vastly improved over those previously adopted and since stayed.² The instant rules reflect a well-balanced, thoughtful response to matters of material concern to both businesses and individuals.

¹ In the Matter of Access to Telecommunications Equipment and Services by Persons With Disabilities, CC Docket No. 87-124, Notice of Proposed Rulemaking, FCC 95-474, rel. Nov. 28, 1995 ("NPRM").

² In the Matter of Access to Telecommunications Equipment and Services by the Hearing Impaired and Other Disabled Persons, Memorandum Opinion and Order and Further Notice of Proposed Rule Making, 5 FCC Rcd. 3434 (1990), recon. denied, 6 FCC Rcd. 4799 (1991), delayed effective date, 7 FCC Rcd. 3472, suspended until further notice, 8 FCC Rcd. 4958 (1993).

While there might be some future problems associated with the implementation of the Commission's proposed rules, those problems are not obvious to U S WEST, Inc. ("U S WEST") at this time. Thus, for now, U S WEST intends to review the comments filed by other parties to this proceeding to determine whether there is something we have missed with respect to either the meaning or the implementation scheduling of the Commission's proposed rules.

In particular, we are interested in reviewing the comments on volume control requirements. At first glance, the Commission's proposals in this area³ appear reasonable. However, there may be something adverse about the current proposal that we do not sufficiently appreciate, at this time. If so, we will comment on the matter in reply comments.

There is only one area of the Commission's NPRM⁴ that U S WEST intends to discuss in these comments, i.e., the matter of "volume control" as potentially accomplished through network functionalities.

II. VOLUME CONTROL VIA NETWORK FUNCTIONALITY

As part of its inquiry into the desirability of adding a volume control feature to wireline telephones, the Committee "stressed that, in considering a technical standard for volume control . . . the focus should be on the end result."⁵ In

³ This matter is addressed in the NPRM ¶¶ 54-61, 65, 72.

⁴ Id.

⁵ Id. ¶ 65.

discussing the various technical "means" that might lead to acceptable volume control results, it has been suggested that "the mechanism might be placed in Private Branch Exchange (PBX) equipment or in network switches."⁶ The Commission specifically seeks comment on "whether . . . it would be possible to locate the volume control feature in places other than in the telephone itself, such as in the network[.]"⁷

Anything is probably possible, as the Commission undoubtedly appreciates. The real issue is whether putting a volume control feature in the network would be wise or in the public interest. U S WEST does not believe that it would.

A network-based volume control feature would likely truncate the ease and flexibility of individual control of the volume of the reception. And, it is predictable that a network solution devised for one network would not necessarily work with another network or service, at least not if the volume control feature were "tonal" in nature.

The value associated with placing certain "individualized" choice options and selections in a telephone station or handset is the ease of control, especially where there are multiple users. Volume "control" with respect to a telephone call will change depending on who the parties to the call are, at any given time.⁸

⁶ Id.

⁷ Id. ¶ 72.

⁸ Indeed, the Committee's proposed definition of "volume control" makes that evident: "the ability of a telephone user to adjust the volume of acoustic sound as that sound emanates from the handset receiver." Id. n. 10.

Not every telephone user needs to make volume adjustments. Among those users who do make adjustments, not every user needs to make the same adjustment. Handset controls are ideal for this kind of "customized" control -- public switched networks are not.

Imagine a network-driven "volume control" feature. Such would probably be tone-activated, i.e., you would "push a button" (which produces a tone) to raise or lower the acoustic level. Unless the feature was line-driven (something that would produce its own problems),⁹ the "network tone" would either increase or decrease the volume for each individual whose station reacted to the tone. That is, if Caller A, talking with Caller B, tried to increase his/her volume to hear Caller B better, Caller B's station would also "recognize the tone" and increase the volume on Caller B's end. Caller B might then try to decrease the volume (hitting a different number/tone, perhaps), and would decrease the volume desired by Caller A.

This problem would only be worse as different networks interconnected, and where all the "numbers/tones" were not utilized identically in the various systems. Furthermore, the "number/tone" used in one network for volume control, might be a number/tone used in another network or service¹⁰ for an entirely different feature or function.

⁹ A "line-driven" solution would mean that the volume of what is heard on the phone was the same for all persons using that station, absent a countervailing volume control button on the handset to adjust the volume differently. And, if the latter were present, the need for the former disappears.

¹⁰ For example, voice mail services are sometimes network services. The numbers/tones do not always match. As a result, hitting a *12 in one system can produce one result and a totally different -- often unexpected and sometimes unwanted -- result in another system. An individual trying to

Nor would networks be able to do volume control in a manner that easily accommodates background noise.¹¹ Indeed, it is U S WEST's experience that even working with volume control features in the stations or headsets requires considerable experimentation to arrive at the appropriate "background noise/volume control fit." A telephone which nicely handles airport background noise may not be the most suitable for a department store mall. While both of these environments may be noisy, the type and quantity of noise may be sufficiently different such that a volume control feature appropriate to one environment may not be ideal in the other. And, neither type of volume control mechanism may be suitable for a hospital waiting room, for example. Handset (or station) controls can accommodate this kind and range of variation in a way that no network solution can.

III. CONCLUSION

For all of the above reasons, and absent any knowledge of the costs to achieve a network volume control solution, U S WEST sees the "network solution" for promoting the existence and use of volume control features as no solution at all,

raise the volume from Network A, connecting to a voice mail system in Network C, might actually accomplish something entirely different from that expected or be unable to leave a message at all.

¹¹ Compare NPRM ¶ 60; and Final Report of the Federal Communications Commission Hearing Aid-Compatibility Negotiated Rulemaking Committee, CC Docket No. 87-124, rel. Aug. 1995, at 20.

regardless of its "theoretic" possibility. We are confident the Commission will agree.

Respectfully submitted,

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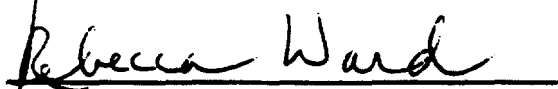
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January 16, 1996

CERTIFICATE OF SERVICE

I, Rebecca Ward, do hereby certify that on this 16th day of January, 1996, I have caused a copy of the foregoing **COMMENTS OF U S WEST, INC.** to be served via hand-delivery, upon the persons listed on the attached service list.


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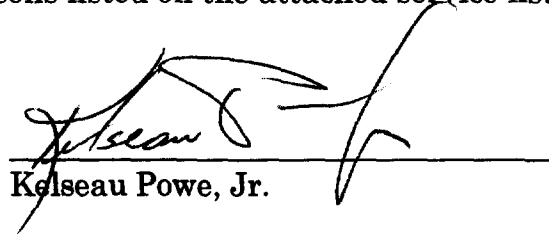
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I, Kelseau Powe, Jr., do hereby certify that on this 28th day of October, 1996,
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